



Public Notice

U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-R

Applicant:

NEW YORK GREEN, INC.

Published: February 7, 2013

Expires: March 8, 2013

Application No: **2012-01118**
Section: NY

All written comments should reference the above Application No. and be addressed to:
Buffalo District U.S. Army Corps of Engineers
Orwell Regulatory Field Office (Attn: Mark Gronceski)
33 Grand Valley Avenue
Orwell, Ohio 44076

INTERESTED PARTIES ARE HEREBY NOTIFIED THAT A PROSPECTUS HAS BEEN RECEIVED PURSUANT TO 33 CFR 332 PROPOSING THE ESTABLISHMENT OF AN IN-LIEU FEE MITIGATION PROGRAM (ILFP) TO BE KNOWN AS THE "LAKE PLAINS IN-LIEU FEE PROGRAM" TO PROVIDE MITIGATION FOR IMPACTS TO WATERS OF THE UNITED STATES UNDER SECTION 404 OF THE CLEAN WATER ACT WITHIN ALL OR PORTIONS OF TEN SEPARATE 8-DIGIT HYDROLOGIC UNIT CODE (HUC) SERVICE AREAS WITHIN THE STATE OF NEW YORK. THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE ESTABLISHMENT OF THE PROPOSED ILFP.

THIS IS NOT AN APPLICATION FOR WORK IN FEDERALLY REGULATED WATERS; HOWEVER, AUTHORIZATION UNDER SECTION 404 OF THE CLEAN WATER ACT MAY BE REQUIRED FOR IMPLEMENTATION OF PARTICULAR MITIGATION SITES LATER PROPOSED UNDER THE ILFP, IF APPROVED. SUCH SITES WOULD BE ADVERTISED UNDER SEPARATE PUBLIC NOTICES. NO DECISION HAS BEEN MADE AS TO WHETHER THIS ILFPA WILL BE APPROVED.

SPONSOR: New York Green, Inc., 99 MedTech Drive, Batavia, New York 14020

LOCATION: The proposed ILFP would encompass ten service areas as depicted on the attached map, each encompassing all or part of an individual 8-digit HUC (Hydrologic Unit Code, a designation for the drainage area encompassed) watershed. The service areas proposed are: (1) Buffalo-Eighteen Mile 04120103, (2) Niagara 03120104, (3) Oak Orchard-Twelve Mile 04130001, (4) Lower Genesee 04130003, (5) Irondequoit-Nine Mile 04140101, (6) Seneca 04140201 (part), (7) Oswego 04140203, (8) Oneida 04140202, (9) Salmon-Sandy 04140102, and (10) Black River 14150101 (part).

DESCRIPTION OF PROPOSED ACTIVITY: Under Section 404 of the Clean Water Act (CWA), applicants for the Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands, are often required to mitigate for permitted wetland losses by creating, restoring, enhancing, or in exceptional circumstances, preserving wetlands or streams. Authorized ILFP's provide the US Army Corps of Engineers (Corps) and the regulated public with additional options for compensatory mitigation of aquatic resource losses. The establishment and use of an ILFP must be in accordance with an ILFP instrument approved by the Interagency Review Team (IRT). The IRT is presently comprised of the Corps, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation.

If the prospectus is deemed sufficient, the ILFP program will be established through the development of an ILFP instrument to be signed by the sponsor, the Corps, and other IRT members which choose to do so. The process will follow 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources ("Mitigation Rule"). The Mitigation Rule was published in the Federal Register on April 10, 2008. The ILFP program would provide an alternative to permittee-responsible mitigation if it is deemed appropriate during the review process for proposed unavoidable impacts to waters of the US authorized under Section 404 of the Clean Water Act ("Section 404"). It may also provide an alternative compensation type for Civil Works projects needing compensation for impacts to aquatic resources as well as providing a resource for use in resolving enforcement cases under Section 404.

The entire prospectus, entitled "**Lake Plains In-Lieu Fee Program**", is found on the Buffalo District's website along with this Public Notice:

<http://www.lrb.usace.army.mil/Missions/Regulatory/ActionsandNotices/PublicNotices.aspx>

A hard copy of the prospectus is also available for viewing at the district's main office in Buffalo (Contact Steve Metivier at 716-879-4314 to schedule an appointment) or at the regulatory field office in Auburn (Contact June Lathrop at 315-255-8090 to schedule an appointment).

The Corps is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps in determining whether to allow the sponsor to proceed to develop a draft ILFP instrument. Comments are also used to determine the need

for a public hearing.

Comments or questions pertaining to this prospectus should reference the Application Number and be directed to the attention of Mark Gronceski, who can be contacted at the above address, by calling (440) 437-5847, or by email at Mark.E.Gronceski@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the proposed ILFP.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-332. Any interested party desiring to comment on the work described herein may do so by submitting their comments in writing, so they are received no later than 4:30pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the review for this proposal. All written comments will be made part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record or portions thereof may also be posted on a Corps internet website. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment. Copies of comments received will be forwarded to the sponsor and to the members of the Interagency Review Team.

SIGNED

Diane Kozlowski
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.